Judgment Summary
Supreme Court
New South Wales
Court of Appeal

Jarrett v State of New South Wales [2026] NSWCA 62

Bell CJ, Ward P, Free JA

In the wake of the terrorist attack at Bondi Beach on 14 December 2025 the State government enacted the *Terrorism and Other Legislation Amendment Act 2025* (NSW) (***Amending Act***). As a result of the Amending Act, the Commissioner of Police was authorised to make a "public assembly restriction declaration" (**PARD**) in certain circumstances. As the name suggests, a PARD operates to restrict the holding of public assemblies within the declared area. On 24 December 2025 the Commissioner of Police made such a PARD, declaring that the holding of public assemblies was restricted in a large area comprising central Sydney and areas to the north, south, east and west of Sydney. The PARD was extended, subject to a revision of the area covered by the declaration, on a number of occasions in January and February 2026. It expired on 17 February 2026.

If a PARD is made, one consequence is that authorisation cannot be obtained under Part 4 of the *Summary Offences Act 1988* (NSW) to hold a public assembly within the declared area. Authorisations of that kind facilitate the lawful conduct of public assemblies by conferring an immunity from certain prohibitions that would otherwise apply to participants in the assembly. The statutory scheme governing such authorisations allows police (and, where necessary, the Supreme Court) to assess the characteristics of particular proposed assemblies, and to respond accordingly. That regime is displaced while a PARD is in force. When and where a PARD applies police officers may also exercise powers under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which are not ordinarily available in relation to public assemblies. This includes the power to issue directions to move on when other people are being obstructed.

The practical effect of a PARD is to discourage the holding of any public assembly within the declared area. This was the effect which the legislature intended to achieve when it enacted the *Amending Act* and conferred the power to make a PARD. That was considered to be a desirable objective because it was perceived that in the wake of a terrorist incident social cohesion can be undermined by the holding of public assemblies.

The plaintiffs challenged the validity of the PARD scheme, as created by the *Amending Act,* on the basis that it infringed the freedom of political communication under the Commonwealth Constitution. Each of the plaintiffs has a history of organising and participating in public assemblies. Each has a special interest in the validity of the PARD scheme because of its potential impact on their ongoing protest activities.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

It was common ground that the provisions challenged by the plaintiffs impose a burden on the freedom of political communication, because their effect is to restrict public assemblies from occurring within a declared area when the power to make a PARD is exercised. A law which burdens the freedom of political communication in this way is only valid if the burden is imposed to fulfil a constitutionally legitimate purpose, and the means adopted are reasonably appropriate and adapted to achieve that purpose.

The Court held that the provisions under challenge failed each of these tests. It is not a legitimate purpose, in the constitutional sense of being compatible with the system of representative and responsible government entrenched by the Constitution, to seek to discourage *all* forms of public assembly across a nominated geographical area to preserve social cohesion. Even if that were a legitimate purpose, the means chosen by the legislature are not reasonably appropriate and adapted to achieving that purpose. The PARD scheme is necessarily indiscriminate. It does not require, or even allow for, consideration of the characteristics or conduct of any particular public assembly caught by a PARD or the nature or severity of any threat to the community that could be said to arise from any particular assembly. The only measure that can be imposed is a blanket restriction on all public assemblies within the declared area. A restriction of that kind is apt to capture assemblies that pose no threat to others, even in terms of social cohesion.

The Court held that although the PARD first made on 24 December 2025 was no longer in force and could not be re-enlivened, the plaintiffs had standing to maintain their constitutional challenge, and there remained a justiciable controversy that the Court had jurisdiction to determine. It was appropriate for the Court to exercise that jurisdiction by resolving the controversy about the validity of the PARD scheme, in circumstances where the plaintiffs contended that the power to make a PARD was wholly invalid. The impugned provisions were held to be invalid and the Court made declarations to that effect.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.